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8 SONY MUSIC ENTERTAINMENT

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 FORMAL ENTERTAINMENT LLC, a
Delaware Corporation,

14 Plaintiff,

15 vs.

16 ZAIN JAVADD MALIK p/k/a ZAYN,
an individual; DAVID DEBRANDON
17 BROWN p/k/a LUCKY DAYE, an
individual; DUSTIN ADRIAN BOWIE
18 p/k/a DAB, an individual; MICHAEL
LAVELL MCGREGOR, an individual;
19 COLE ALAN CITRENBAUM, an
individual; PHILIP VON BOCH
20 SCULLY, an individual; SONY MUSIC
ENTERTAINMENT, a Delaware
21 General Partnership; and DOES 1
through 100,

22 Defendants.
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Case No. 2:23-cv-7888 CMB (SKx)

NOTICE OF MOTION AND MOTION
TO DISMISS AND TO STRIKE

[Fed. R. Civ. P. 12(b)(6) & 12(f)]

Date: January 30, 2024
Time: 10:00 a.m.

Courtroom of the Honorable
Consuelo B. Marshall
United States District Judge

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 30, 2024, at 10:00 a.m. or as soon
3 thereafter as the matter may be heard in Courtroom 8D of the above-entitled Court
4 located at 350 West 1st Street, Los Angeles, California, defendants Philip Von Boch
5 Scully, Michael Lavell McGregor, David Debrandon Brown, and Sony Music
6 Entertainment (“Defendants”) will move the above-entitled Court, the Honorable
7 Consuelo B. Marshall, United States District Judge presiding, for an Order dismissing
8 the First Amended Complaint of plaintiff Formal Entertainment LLC (“Plaintiff”) and
9 each claim asserted therein, dismissing or striking the First Amended Complaint’s
10 prayers for declaratory relief and compensatory and special damages, and striking the
11 First Amended Complaint’s allegations that Plaintiff has not received songwriter
12 credit for, or a copyright ownership interest in, the allegedly infringing musical
13 composition, *Better*.

14 The Motion to dismiss is brought pursuant to Federal Rule of Civil Procedure
15 12(b)(6) and on the following grounds:

16 1. Plaintiff fails to plausibly plead that the creators of *Better*
17 had access to Plaintiff’s alleged work and, as a result, Plaintiff fails to
18 plausibly plead claims for direct, contributory, and vicarious copyright
19 infringement.

20 2. Plaintiff also fails to plausibly plead substantial similarity
21 between *Better* and Plaintiff’s alleged work, relying instead on
22 conclusory allegations of unidentified similarities in melody and other
23 musical elements and a single word, “fight,” that are not protected as a
24 matter of law. For this independent reason, Plaintiff fails to plausibly
25 plead claims for direct, contributory, and vicarious copyright
26 infringement.

27 3. Plaintiff alleges that all defendants are direct, contributory,
28 and vicarious copyright infringers. But Plaintiff provides only

1 conclusory allegations, alleges no basis on which the same defendants
2 who are allegedly direct infringers also are contributory or vicarious
3 infringers, and fails to identify for whom they are supposedly
4 contributorily and vicariously liable, thereby failing to provide notice to
5 Defendants, as well as the other defendants, of the basis of the claims
6 asserted against them. For this additional reason, Plaintiff fails to
7 plausibly plead claims for direct, contributory, and vicarious copyright
8 infringement.

9 4. Plaintiff's First Amended Complaint prays for, *inter alia*, a
10 judicial declaration that defendants have infringed Plaintiff's claimed
11 copyright. But Plaintiff does not assert a claim for declaratory relief and,
12 in any event, a claim for a declaration of infringement is duplicative of
13 Plaintiff's substantive claims for infringement and, for that additional
14 reason, is properly dismissed as duplicative and redundant.

15 5. Plaintiff's First Amended Complaint prays for damages
16 pursuant to Section 504(b) of the Copyright Act of 1976, 17 U.S.C.
17 Sections 101 *et seq.*, but then also prays for additional compensatory and
18 special damages that are not recoverable on Plaintiff's copyright
19 infringement claims. As a result, Plaintiff's claim for compensatory and
20 special damages is properly dismissed.

21 The Motion to strike is brought pursuant to Federal Rule of Civil Procedure
22 12(f) and on the following grounds:

23 1. Plaintiff's First Amended Complaint repeatedly alleges that
24 Plaintiff has not received songwriter credit for, and an ownership interest
25 in, *Better*, supposedly demonstrating that the alleged infringement is
26 willful. But those allegations are immaterial and impertinent, including
27 because receiving credit or an ownership interest are not potential
28 remedies available under the Copyright Act of 1976 and, insofar as

1 Plaintiff does not seek statutory damages under 17 U.S.C. Section 504(a)
2 and (c), the allegation of willfulness is irrelevant.

3 2. If the Court determines that a Rule 12(f) motion to strike,
4 rather than a Rule 12(b)(6) motion to dismiss, is the proper procedure to
5 challenge Plaintiff's prayer for declaratory relief and compensatory and
6 special damages, those references should be stricken as redundant,
7 immaterial, and/or impertinent.

8 These Motions are based upon this Notice of Motion and Motion, the
9 accompanying Memorandum of Points and Authorities, Declaration *re* Local Rule 7-
10 3 compliance, and Request for Judicial Notice, the pleadings and papers on file in this
11 action, the matters of which this Court may take judicial notice, and such additional
12 matters and oral argument as may be offered in support of the Motions.

13 This Motion is made following the conferences of counsel pursuant to L.R. 7-
14 3, on November 17, 2023, as to Plaintiff's initial Complaint, and on December 15,
15 2023, as to Plaintiff's First Amended Complaint.

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17 Dated: January 2, 2024

/s/ Peter Anderson
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